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# Bringing international policy home: Michigan's Emergency Management as subnational indefinite temporary occupation

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Thesis

**BRINGING INTERNATIONAL POLICY HOME: MICHIGAN'S EMERGENCY  
MANAGEMENT AS SUBNATIONAL INDEFINITE TEMPORARY  
OCCUPATION**

by

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*“It was a crazy city, and nobody was running it. Or everybody was, whichever you pick.”*

*-Louis Schimmel, Emergency Financial Manager for the City of Hamtramck (2001)<sup>1</sup>*

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<sup>1</sup> Collins, “Czar Wars.”

## **DEDICATION**

I would like to dedicate this work to my parents and my brother, without whom I would have never made it this far.

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**ABSTRACT**

Since 1986, the State of Michigan has developed a policy of financial receivership for fiscally distressed local governments. This system entailed local democratic suspension, as the State government installed an Emergency Manager with complete power over the locality. Occupation primarily affected majority-black cities, was imposed without any real recourse, and lasted as long as State officials desired. A framework of indefinite temporary occupation in international politics highlights the structural ways in which Michigan's subnational policy is juridically enabled, a symptom of structural financial and racial disinvestment, for the benefits of privileged elites, and contingent on national apathy. Additionally, the application of this lens delineates the systemic ways in which Emergency Management undermines local democracy even after the headlines proclaim its end.

## TABLE OF CONTENTS

DEDICATION .....	v
ABSTRACT.....	vi
TABLE OF CONTENTS.....	vii
LIST OF ABBREVIATIONS.....	ix
INTRODUCTION .....	1
THE HISTORY OF MICHIGAN’S EMERGENCY MANAGEMENT	
LEGISLATION .....	3
The Legislative Record.....	3
Louis Schimmel, the Architect of Emergency Management .....	4
Single-Issue and Systemic-Issues Cities.....	7
SCHOLARLY APPROACHES TO EMERGENCY MANAGEMENT .....	9
Public Administration.....	10
Discriminatory Policy .....	11
Indefinite Temporary Occupation.....	12
THE APPLICATION OF INDEFINITE TEMPORARY OCCUPATION TO	
MICHIGAN’S EM LAWS .....	15
Robert Mickey’s <i>Paths out of Dixie</i> Framework .....	15
Criteria of Subnational Indefinite Temporary Occupation .....	16
MICHIGAN’S EM LAWS AS SUBNATIONAL INDEFINITE TEMPORARY	
OCCUPATION .....	19
The General Position of Local Governments in the United States .....	19



A Brief History of Urban Destabilization and Structural Racism Since 1900 .....	21
Emergency Management as an Indefinite Occupation through the Eyes of Michigan Residents .....	24
Occupation for Elite Benefit .....	29
The Limitations of Michigan's Subnational Occupation.....	34
INDEFINITE TEMPORARY OCCUPATION AND THE FUTURE OF MICHIGAN'S CITIES .....	38
Financial Instability .....	38
Reduced Institutional Capacity and Memory .....	40
Entrenchment of Undemocratic Institutions .....	44
CONCLUSION.....	49
BIBLIOGRAPHY .....	53
CURRICULUM VITAE.....	62

## LIST OF ABBREVIATIONS

AG.....	Attorney General
DWSD.....	Detroit Water and Sewerage Department
EFM .....	Emergency Financial Manager
EM.....	Emergency Manager
FRC .....	Detroit Financial Review Commission
GCIV .....	The Fourth Geneva Convention
KWA.....	Karegnondi Water Authority
OSC.....	Office of Special Counsel
RTAB .....	Receivership Transition Advisory Board
SITO.....	Subnational Indefinite Temporary Occupation
TYJT .....	Engineering firm Tucker, Young, Jackson, Tull
VRA .....	Voting Rights Act

## INTRODUCTION

With images of mud-brown water gushing from taps and terrible rashes on the bodies of young children, the city of Flint, Michigan burst into national discourse in 2014. While the majority of the nation's attention focused on the horrors and outrages of this government-inflicted water crisis, some reporters brought the underlying causes to light. Since the end of the second World War, government policies and economic changes have led to disinvestment and decay within many of America's cities. These trends, coupled with historically resilient structural racism, have set cities up to fail and many were pushed over the brink following the global financial crisis of 2007-08.

On top of these stressors, local governments in Michigan faced an additional threat: Emergency Management. Although many States have legislation providing for the intervention of the State government into local affairs during a case of financial instability, Michigan is an outlier for the amount of power it seizes from its localities and the concentration of control in the hands of a single individual: the Emergency Manager (EM). An EM was the sole decision-maker behind the dubious switch of Flint's water supply, the failure to protect local residents, and the obstruction of popular demands for a solution to Flint's mass-poisoning. While Flint is the most egregious case of harm committed by an EM, such Managers do far more harm than good in the majority of cases. Additionally, the policy is symptomatic of structural racism: over half of Michigan's black constituents were ruled by an EM from 2008 to 2013 and only 2.4% of its white population.<sup>2</sup> Even when an EM leaves and self-rule is nominally returned to a

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<sup>2</sup> Stanley, "The Emergency Manager," 7.

local government, Managers leave behind destabilized institutions, substantial long-term debt, and measures actively restricting a locality's autonomy.

Other authors primarily evaluate the program of Emergency Management through the lens of public administration, based on its immediate results, or discriminatory policy, as a symptom of America and Michigan's long history of systemic racism. However, these writers fail to hone in on how the imposition of an EM, in and of itself, impacts a city and its citizen's ability to govern itself both during and after Management. Previous literature has fallen short of fully framing how State control continues after an EM withdraws, and the very real possibility of Emergency Management returning in the future. Drawing from the International Relations assessment of indefinite temporary occupation, I position Emergency Management as a subnational form of uncertain, but durable, democratic suspension. Such robust democratic suspension necessarily impairs the health of a future return to democracy. This approach is informed by Robert Mickey's work in *Paths out of Dixie* evaluating the Jim Crow South as a form of subnational authoritarianism. Mickey's framework highlights the utility of theories in international relations and the comparative analysis of countries for informing our understanding of regional governments' behavior. Applying the lens of subnational indefinite temporary occupation to Emergency Management will advance an understanding of Michigan's policy as not only historically contingent, but also boasting its own enduring legacy within affected localities.

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## **THE HISTORY OF MICHIGAN'S EMERGENCY MANAGEMENT**

### **LEGISLATION**

#### **The Legislative Record**

Since the city of Ecorse was put under court-ordered financial receivership in December 1986, led by one Louis Schimmel, the State of Michigan has developed a lineage of programs which place financially troubled local jurisdictions under its authority.<sup>3</sup> Two years later, the State legislature passed Public Act 101 of 1988 to further support the court's decision.<sup>4</sup> Two years after that, the State legislature passed PA 72 of 1990, allowing the State to appoint an Emergency Financial Manager (EFM) for any local jurisdiction when requested by residents, local officials, or State legislators. Ten years later, this general EFM law was first used in the city of Hamtramck in 2000. A handful of further cities were placed under a PA 72-designated EFM through 2011.

Following the inauguration of Republican Governor Rick Snyder on January 1, 2011, the State of Michigan passed a new iteration of receivership with PA 4 of 2011.<sup>5</sup> As a part of Governor Snyder's technocratic campaign platform, this law replaced the position of EFM with that of an Emergency Manager (EM), continuing the previous positions while giving managers greater powers.<sup>6</sup> The expanded powers of PA 4 of 2011 caused public uproar, and it was repealed in November 2012 by popular referendum. In response, Rick Snyder and the Republican-controlled State legislature passed PA 436 of

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<sup>3</sup> LaFaive, "Privatization Brought Ecorse, Michigan, Back from Bankruptcy," 1999.

<sup>4</sup> Ivacko and Horner, "Local Leaders," 2.

<sup>5</sup> Jones, "Tenants at Will of the Legislature," 131-143.

<sup>6</sup> Stanley, "The Emergency Manager," 12-14.

2012, which was similar to the repealed law, but immune to repeal by popular vote. One major concession of this new law is that local governments in fiscal distress have more choices (subject to State Treasury Department approval). Local jurisdictions may: go through bankruptcy proceedings, enter mediation with creditors, form a consent agreement with the State, or have an EM appointed. PA 436 of 2012 gained national attention due to the role of EMs in both Detroit's bankruptcy proceedings during 2013-2014 and in causing Flint's ongoing water crisis.<sup>7</sup> Despite the election of Democratic Governor Gretchen Whitmer in January 2019, Republican control of the state legislature ensures that this version of Emergency Management law is still on Michigan's books as of October 2020.<sup>8</sup>

### **Louis Schimmel, the Architect of Emergency Management**

Behind the scenes, Louis Schimmel has been a recurring actor in the development of Michigan's management laws since his appointment as the city of Ecorse's receiver in 1986. Since Judge James Rashid officially ended Ecorse's receivership on August 31, 1990, Schimmel has played key roles in the implementation and construction of later management policy.<sup>9</sup> First, Schimmel remained as an official "monitor" of the city of Ecorse until August 1st, 1999. His oversight of the city lasted *nine years* after his official, and oft-cited, departure date.<sup>10</sup> During this time, Schimmel served as Executive

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<sup>7</sup> Ivacko and Horner, "Local Leaders," 2.

<sup>8</sup> According to an online search of Michigan Compiled Laws on 11/8/2020 [http://www.legislature.mi.gov/\(S\(0cno0srremfcr3fhtxn0ehn\)\)/mileg.aspx?page=MclPASearch](http://www.legislature.mi.gov/(S(0cno0srremfcr3fhtxn0ehn))/mileg.aspx?page=MclPASearch)

<sup>9</sup> Hohman, "The 1987 City of Ecorse Receivership," 2012.

<sup>10</sup> LaFaive, "Privatization Brought Ecorse, Michigan, Back from Bankruptcy," 1999.

Director for the Municipal Advisory Council of Michigan, retiring in February 2001.

The Municipal Advisory Council of Michigan is “a statistical clearing house for investment bankers located throughout the United States who underwrite and/or invest in Michigan municipal bond issues.”<sup>11</sup> Interestingly enough, seven websites maintain verbatim that “he is recognized in the municipal bond industry as an authority on the creditworthiness of Michigan municipal debt issues.”<sup>12</sup> Schimmel has been generally active in municipal bondholding firms and public-adjacent organizations, such as the Michigan-focused neoliberal think tank Mackinac Center for Public Policy.<sup>13</sup> The Mackinac Center is funded by a range of conservative billionaires and pushes a technocratic ideology which privileges the policy preferences of “experts” over those of citizens and democratically elected officials.<sup>14</sup>

After his extensive tenure of control and influence over Ecorse during the late 80s and 90s, Schimmel has been repeatedly involved in Michigan’s history of Emergency Management. He was selected as EFM of Hamtramck in 2000 and served until 2007, one of the first two EFMs ever appointed under PA 72 of 1990.<sup>15</sup> In 2005, Schimmel published a guiding report through the Mackinac Center titled “Can Detroit’s Problems Be Solved by an Emergency Manager?”<sup>16</sup> In 2011, the Mackinac Center republished this

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<sup>11</sup> “About Our Members,” The Michigan Legislative Council. Accessed February 8, 2021.

<sup>12</sup> *ibid.*; “Contributor Louis Schimmel,” Verizon Media, Accessed February 9, 2021; Gilroy and LaFaive, “From Traditional to Contract City,” 2014; “Louis H. Schimmel Jr.,” Mackinac Center for Public Policy, Accessed February 9, 2021; Municipal Financial Consultants Incorporated, “Former Pontiac Emergency Manager Louis H. Schimmel,” August 18, 2014; Russell, “Finally a Qualified Emergency Manager,” Vol. 2 Issue 11: 2.

<sup>13</sup> “Louis H. Schimmel Jr.,” Mackinac Center for Public Policy,” Accessed February 9, 2021.

<sup>14</sup> Stanley, “The Emergency Manager,” 4-5 and 21-23.

<sup>15</sup> Clark and Gorina, “Emergency Financial Management in Small Michigan Cities,” 542.

<sup>16</sup> Stanley, “The Emergency Manager,” 23.

article by Schimmel two months before Snyder's PA 4 of 2011 was introduced. This proximity supports the conclusion that Schimmel provided an effective outline for the policy which followed.<sup>17</sup> After Hamtramck, Schimmel was again one of the first EMs appointed under PA 4 of 2011 and ruled over the City of Pontiac. He ran the city from September 12, 2011 through August 19, 2013.<sup>18</sup> Following Pontiac's exit from management, Schimmel was appointed by Governor Snyder to the city's Receivership Transition Advisory Board (RTAB), overseeing the city through July 27th of 2017.<sup>19</sup>

Louis Schimmel's prevalence throughout the entire duration of Michigan's Emergency Management laws, with brief interludes in municipal bondholding organizations and think tanks, illustrates a level of coherence and continuity in the State's policy attitude towards local governments. While Management manifested in a variety of juridical forms, the underlying technocratic and neoliberal impulse remained constant. Schimmel's pervasiveness helps illustrate this fact. Although the entirety of the program cannot be credited to him, Schimmel's involvement from the first receivership, through the drafting of PA 4 of 2011, and onwards demonstrates an underlying unity to Michigan's phenomenon of EMs. Thus, it is vital to theoretically conceptualize and contextualize Emergency Management policy.

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<sup>17</sup> Seamster, "When Democracy Disappears," 319.

<sup>18</sup> Municipal Financial Consultants Incorporated, "Former Pontiac Emergency Manager Louis H. Schimmel," August 18, 2014.

<sup>19</sup> "Financial Emergency Information City of Pontiac," Michigan Department of Treasury.



### Single-Issue and Systemic-Issues Cities

Between 2000 and 2014, the State of Michigan placed nine different local governments under Emergency Management: Highland Park, Benton Harbor, Hamtramck, Flint, Detroit, Pontiac, Ecorse, Lincoln Park, Three Oaks, and Allen Park. One important distinction must be made amongst these cities. While the first eight cities suffered from the “systemic issues” facing post-industrial cities throughout America, Three Oaks and Allen Park were placed under Management for “single issue” reasons.<sup>20</sup> The Village of Three Oaks became financially distressed after the poor fiscal management of a street project by the local council.<sup>21</sup> Allen Park suffered from financial mismanagement, but was pushed over the edge by fraudulent bond deals written by a former mayor and city administrator for a failing city-owned movie studio.<sup>22</sup> In addition to differing causes of financial instability, these two single-issue cities are demographically different from the other eight. Three Oaks and Allen Park have household incomes almost twice that of the others, have far lower levels of poverty, and are over ninety percent white.<sup>23</sup> Furthermore, predominantly white single-issue cities have been more receptive towards management and suffered fewer unilateral decisions by EMs (although Allen Park has suffered lasting reductions in its democratic health). Due to these fundamental distinctions between single-issue and systemic-issues cities,

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<sup>20</sup> Jones, “Tenants at Will of the Legislature,” 318-321.

<sup>21</sup> Jones, “Three Oaks Goes Broke.”

<sup>22</sup> Meloni, “Judge Slams State of Michigan in Failed Allen Park Movie Studio.”

<sup>23</sup> U.S. Census Bureau, 2010 Census of Population and Housing, *Summary Population and Housing Characteristics*.

this in-depth analysis of democratic suspension under Emergency Management will primarily focus on the first eight, systemic-issues cities.

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## **SCHOLARLY APPROACHES TO EMERGENCY MANAGEMENT**

In recent years, works by scholars and academic writers have proliferated, seeking to evaluate EM policy, its effects, and its relevance to different theoretical frameworks. So far, this analysis has fallen into two camps: those who gauge Michigan's Emergency Management in terms of general public administration, and those who judge the program as simply another iteration of racist government policy. While mainly concluding that Emergency Management has negative outcomes for those ruled by it, both of these approaches use lenses from current and historic American policy to frame Michigan's EM policy. Through the application of external theory, I will elucidate the ongoing and future implications of Emergency Management.

Within international relations, indefinite temporary occupation is a state of occupation by a foreign power that is considered "temporary occupation" under the constraints of international law, but has nonetheless lasted for an "indefinite" period of time. The most infamous example of this phenomenon is the Israeli occupation of the Golan Heights, the West Bank, and East Jerusalem since 1967.<sup>24</sup> I recognize the place of EMs within the history of discriminatory and oppressive policy in Michigan and America. However, through the framework of indefinite temporary occupation, I position Emergency Management as a distinct state of governance which mirrors international conceptions of indefinite temporary occupation. Through this perspective, I will assess Emergency Management as a form of occupation by the superior State

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<sup>24</sup> Arai-Takahashi, "Prolonged Occupation;" Cohen, "Israel's Control;" Klug, "A Never-Ending Occupation."

government, limited by the legal framework of the U.S. Constitution and federal law but nonetheless tenacious. This lens will advance an understanding of Michigan's Emergency Management policy as not only historically contingent, but also boasting its own enduring legacy within affected cities.

### **Public Administration**

As State-appointed bureaucrats, Michigan's EFMs and EMs have received attention from scholars of public administration. Researchers in this field have sought to appraise Emergency Management according to its purported goal: rescuing local jurisdictions from financial ruin. Their works seek to answer such questions as: who makes a good EM?<sup>25</sup> do local officials approve of EM laws?<sup>26</sup> does Emergency Management actually improve fiscal health?<sup>27</sup> and do citizens benefit from EMs?<sup>28</sup> While this line of research has produced important information on the efficacy and impact of Emergency Management programs in Michigan, its analysis is limited by appraising EMs as an expression of current public policy. This perspective fails to adequately incorporate historical contexts of race and oppression which shape Michigan's EM policy. Also, while these works do integrate forward-looking estimations of EMs' long-term effects, writers generally limit their assessments to service or finance-related factors without concern for long-term changes in governance or institutional capacity.

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<sup>25</sup> Kasdan, "A Tale of Two Hatchet Men."

<sup>26</sup> Ivacko and Horner, "Local Leaders."

<sup>27</sup> Clark and Gorina, "Emergency Financial Management."

<sup>28</sup> *ibid.*; Jones, "Tenants at Will of the Legislature;" Murphy, "In Service of Creditors."

### **Discriminatory Policy**

Outside of the bureaucratic lens of public administration, researchers have positioned Emergency Management in Michigan as a continuation of the American North's particular history of discriminatory policies: redlining, white-flight, urban disinvestment, and voter suppression.<sup>29</sup> These scholars have used frameworks such as technocracy,<sup>30</sup> Vesla Weaver's "frontlash,"<sup>31</sup> strategic racism,<sup>32</sup> structural racism,<sup>33</sup> neoliberalism,<sup>34</sup> and a "white urban regime."<sup>35</sup> Such perspectives describe: the structures essential to Emergency Management in Michigan (strategic and structural racism), the narratives justifying the policy (technocracy and neoliberalism), and the methods used by primarily white elites to shape implementation (frontlash and the white urban regime). These theoretical lenses describe the context of Emergency Management but fail to describe EM policy itself.

Researchers have identified the structures, long-term trends, narratives, and actors behind Michigan's EM implementation, but they have failed to directly address Management itself. Important questions remain. What legislative and juridical traditions shape EM law? In what ways do national American political objectives constrain or

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<sup>29</sup> Clark, *The Poisoned City*.

<sup>30</sup> Stanley, "The Emergency Manager."

<sup>31</sup> *ibid.*, Hammer, "The Flint Water Crisis."

<sup>32</sup> *ibid.*

<sup>33</sup> Hammer, "The Flint Water Crisis;" Seamster, "When Democracy Disappears."

<sup>34</sup> Fasenfest and Pride, "Emergency Management in Michigan;" Fasenfest, "A Neoliberal Response to an Urban Crisis."

<sup>35</sup> Seamster, "When Democracy Disappears."

enable Michigan's decisions? Additionally, these disparate works place EMs within the historical trajectory of American racism, but they fail to directly address how the implementation of Emergency Management itself leaves lasting institutional damage in local jurisdictions. Papers assessing Flint, Michigan's case necessarily mention the enduring impact of lead poisoning on the mental, physical, and societal health of the city.<sup>36</sup> However, this analysis still falls short of focusing on the institutional future of local governments. In particular, it is important to understand the ways in which the antidemocratic nature of Emergency Management produces a continuing or *perpetual* state of crippled local democracy.

### **Indefinite Temporary Occupation**

For the Realist school of International Relations, influenced by the anarchic "state of nature" in Hobbes' *Leviathan*, interactions between states occur in an environment of brute power calculations, interstate lawlessness, and impotent international institutions.<sup>37</sup> However, international law does impose potent boundaries on state behavior. Such limits even extend to the most concrete aspects of a state's existence. For instance, the remarkable persistence of African states and their post-colonial borders after independence relies in no small part upon international institutions and their laws.<sup>38</sup> Within a similar purview, international law is widely considered to prohibit the

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<sup>36</sup> Clark, *The Poisoned City*; Hammer, "The Flint Water Crisis;" Stanley, "The Emergency Manager."

<sup>37</sup> Walt, Stephen M. "International Relations: One World, Many Theories."

<sup>38</sup> Jackson and Rosberg, "Why Africa's Weak States Persist."

annexation of territory by a state through Article 2(4) of the UN Charter and Article 49 of the fourth Geneva Convention (GCIV).<sup>39</sup>

The strength of international laws regarding annexation have constrained states' occupation of foreign territory since the end of the second World War. An official and legal annexation of territory has been rejected by the international community for occupations by states such as Israel (of Palestinian territories since 1967), Morocco (of Western Sahara since 1975), Turkey (of Northern Cyprus since 1974), and Indonesia (of East Timor between 1975-1999).<sup>40</sup> Due to the functional international prohibition on annexation, rule by these states of their subject territory is regarded as a temporary occupation. Therefore, there is an international consensus that the rules of war regarding provisional occupation of foreign territory should apply. However, as the extant occupations are nearing their 50th anniversary, it is important to highlight that the original drafters of international laws never envisioned an *indefinite* form of temporary occupation. While there is some room for eventualities of protracted foreign occupation and decades-long suspension of self-rule, there is no specific legal classification for such indefinite temporary occupation. This oversight is due to the avoidance of colonial

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<sup>39</sup> Article 2(4) of the UN Charter states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Section III (Articles 47-78) of the fourth Geneva Convention (GCIV) regards Occupied Territories. Article 49 of GCIV states that "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive" and that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." Explicit commentary on these international agreements functioning as a ban on annexation can be found respectively on pages 12 and 33 of Arai-Takahashi's "Unearthing the Problematic Terrain of Prolonged Occupation."

<sup>40</sup> Arai-Takahashi, "Unearthing the Problematic Terrain of Prolonged Occupation," 2.

precedent, such as the British occupation of Egypt from 1882 to 1954, during the composition of post-war international articles.<sup>41</sup>

Due to the combined trends of continued occupation and the impossibility of formal annexation, indefinite temporary occupation has become a fact of contemporary world politics. This state of governance is defined by a suspension of self-rule, an imposition of external control, and the inability of international actors to change the status quo. Global opponents are generally unable to sway a nation to leave foreign soil (and in the Israeli case have failed to push the issue militarily) and global supporters of the occupation are unable or unwilling to ensure the permanent possession of occupied territory. Beyond the sheer inability to annex territory, rule by occupying states is also partially constrained through international law and the expectations of the international community. In order to legitimize its rule of Palestinian territory, Israel partially observes the tenants of GCIV. Additionally, critics of the occupation have proposed strengthening the sovereignty of Palestine, through its admission to the UN as a member-state, as a way to accelerate an end to the status quo and the suspension of democratic self-rule.<sup>42</sup> While the current Israeli approach to its occupied territories evolves, the majority of its indefinite temporary occupation has been characterized by a precise and contorted interaction with international laws and the assumption of ultimate state authority by Israel for its benefit.<sup>43</sup>

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<sup>41</sup> Arai-Takahashi, "Unearthing the Problematic Terrain of Prolonged Occupation," 39-41.

<sup>42</sup> Klug, "A Never-Ending Occupation."

<sup>43</sup> Cohen, "Israel's Control of the Territories."



## THE APPLICATION OF INDEFINITE TEMPORARY OCCUPATION TO MICHIGAN'S EM LAWS

### Robert Mickey's *Paths out of Dixie* Framework

Mickey's work focuses on presenting Democratic rule of States from the end of Reconstruction through 1972 in the American South as a case of "subnational authoritarian" enclaves. While previous researchers developed the concept through studies of Latin America and Russia, the application of subnational authoritarianism to the United States was a novel concept.<sup>44</sup> Enclaves of such undemocratic rule are defined by six major characteristics. First, authoritarian enclaves are a "political achievement" in appeasing various elite interests and maintaining governance over time.<sup>45</sup> Second, these governments are not sovereign, and are necessarily restricted by the policy, laws, institutions of the national state. Third, enclave rulers actively participate in national politics in order to stifle action by internal and external opponents. Fourth, national parties provide resources and autonomy to enclaves in return for support on the national stage. Fifth, enclaves are protected under national judiciaries that do not interfere in internal matters of repression. Sixth, the decentralization of power and control to regional governments increases the resources and capabilities of authoritarian enclaves.<sup>46</sup> As such enclaves maintain a complex relation to their national government, of subordination and support, their process of democratization is distinct from that of states and occurs in three ways. First, subnational democratization may be "party-led," in

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<sup>44</sup> Johnson, "Paths Out of Dixie."

<sup>45</sup> Mickey, *Paths Out of Dixie*, 34.

<sup>46</sup> Mickey, *Paths Out of Dixie*, 14-15.

which national party allies electorally assist opponents to local regimes. Second, “center-led” transitions are imposed on the enclave by the national government. Third, “self-imposed” democratization is primarily motivated by internal forces. In general, self-imposed changes are rare given the weakness of local opponents, party-led transition is possible only where electoral competition is viable, and center-led democratization is the most credible threat to even entrenched enclaves. Therefore, subnational regimes seek to prevent the nationalization of internal conflicts.<sup>47</sup>

Through this robust conceptualization of subnational authoritarian enclaves, with an eye on American examples, Mickey illustrates regimes which are far more limited and contingent than their sovereign counterparts. While these States do produce effective bargains with local elites, they are inherently tied to the norms and structures of the overarching national government. Most importantly, they can only maintain their ruling status quo through the tacit consent or distraction of the superior state.

### **Criteria of Subnational Indefinite Temporary Occupation**

While the Emergency Management of Michigan’s local governments was not durable enough, robust enough, or far-ranging enough to constitute a full case of subnational authoritarianism, a merger of this concept with that of indefinite temporary occupation lends itself to a characterization and understanding of EMs effect on Michigan’s citizens. Drawing from these two terms, subnational indefinite temporary occupation (SITO) can be considered to have six facets. First, SITO is a policy

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<sup>47</sup> Mickey, *Paths Out of Dixie*, 16-17.

achievement constructed around the consensus of powerholding local and regional elites, and is thus liable to shift as the situation on the ground evolves. Second, the norms, laws, and institutions of the national government necessarily restricts the policy space of a regional government which enacts SITO. Third, a regional government's implementation of SITO endures through the tacit or implicit consent of the national government and national parties. Fourth, SITO particularly requires a national judiciary with a sympathetic or disinterested stance. Fifth, strong regional governments are more capable of implementing and sustaining indefinite temporary occupation. Sixth, restraints on regional governments mean that occupation will likely be imposed on sections of their own territory and be less reliant on military or security personnel for day-to-day operations.

From these foundational characteristics, SITO can be succinctly defined as a suspension of a local government's self-rule by a regional government, which continues indefinitely. This occupation appears to be temporary in order to avoid possible interference by a superior national government. Whatever the region's initial or purported purpose of democratic suspension, it strengthens and becomes indefinite in those localities where occupation is most beneficial to regional elites. The three possible routes to ending this form of indefinite temporary occupation are likely to mirror that of changes to subnational authoritarianism: party-led, center-led, or self-imposed. While an end to SITO is likely to require less pressure than subnational authoritarianism, due to smaller levels of benefit and risks associated, the probability of any particular route is

likely to be similar: center-led the most likely, party-led the second, and self-imposed the least.

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## MICHIGAN'S EM LAWS AS SUBNATIONAL INDEFINITE TEMPORARY OCCUPATION

### The General Position of Local Governments in the United States

While the United States Constitution explicitly addresses the purview of the State and federal governments, the subject of local governance is far more ambiguous. Two competing perspectives, first robustly defined in court cases following the Civil War, shape the strength and inviolability of local governments. The dominant perspective is “Dillon’s Rule,” crafted by Chief Justice John Forrest Dillon of the Iowa State Supreme Court. With *City of Clinton v. Cedar Rapids & Missouri River Railroad* (1868), he famously declared that:

“The true view is this: Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.” (*City of Clinton v. Cedar Rapids & Missouri River Railroad* 1868)

This perspective was further reinforced through Dillon's publishing of his *Commentaries on the Law of Municipal Corporations* in 1872, the first compilation of its kind in America. While this work consisted of multiple volumes published in five editions through 1911, and reflected on over 40,000 cases, the *Commentaries*' most influential section was on the expansion of Dillon's Rule. Although Dillon conceives of a distant limit to the power States hold over local governments, terming the dissolution of a locality as "so great a folly" in the original *City of Clinton* case, he applied his Rule without restraint throughout his *Commentaries* and the remainder of his judicial career.<sup>48</sup>

While Dillon's Rule has gained greater sway and prominence since its inception, Cooley's Doctrine has correspondingly emphasized a fundamental right to local government since 1871. In *People ex rel. Le Roy v. Hurlburt* (1871), Justice Thomas McIntyre Cooley of the Michigan Supreme Court authored an opinion declaring that "The right in the state is a right, not to run and operate the machinery of local government, but to provide for and put it in motion." Furthermore:

"The state may mould local institutions according to its views of policy or expediency; but local government is matter of absolute right; and the state cannot take it away. It would be the boldest mockery to speak of a city as pos-sessing municipal liberty where the state not only shaped its government, but at discretion sent in its own agents to administer it..." (*People Ex Rel. le Roy v. Hurlbut* 1871)

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<sup>48</sup> Gere, "Dillon's Rule and the Cooley Doctrine," 272-278.

Although Cooley's Doctrine was authored within a few years of Dillon's rule, as well as expanded by additional jurists and legal scholars, the Doctrine failed to gain similar sway within American politics and jurisprudence.<sup>49</sup> Dillon's Rule succeeded because of greater coherence in its argument, the infancy of conceptions of "public property," and the supremacy of State legislatures in contemporary politics. With these favorable conditions, Dillon's Rule has cemented itself into American political thinking at the expense of Cooley's Doctrine and local self-rule.<sup>50</sup> The allocation of such complete power to the States is also reflected in the intentions of the Constitution's framers. In the Federalist No. 51, Madison famously argues that "ambition must be made to counteract ambition" and that "in the compound republic of America... a double security arises to the rights of the people. The different governments (State and federal) will control each other" and ultimately benefit democratic rule.<sup>51</sup> However, as seen with the United States experiment in colonial government and extensive decentralization in the Philippines, an unyielding promotion of regional governments has a "not infrequent capacity to promote local authoritarianism instead."<sup>52</sup>

### **A Brief History of Urban Destabilization and Structural Racism Since 1900**

Since the turn of the twentieth century, America's Northern cities have been defined by industrialization and segregation, followed by deindustrialization,

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<sup>49</sup> Gere, "Dillon's Rule and the Cooley Doctrine," 280-281; Jones, "Tenants at Will of the Legislature," 44-45.

<sup>50</sup> Gere, "Dillon's Rule and the Cooley Doctrine," 283-296.

<sup>51</sup> Rossiter, ed. *The Federalist Papers*, 319 and 320.

<sup>52</sup> Hutchcroft, "Colonial Masters, National Politicos, and Provincial Lords," 296.

disinvestment, and racism's enduring structures. As manufacturing boomed in the first decades of the 1900s, hundreds of thousands of black people migrated to the North, particularly Michigan's industrial region centered around Detroit, Flint, and other outlying cities. These new residents encountered robust institutions of racism and segregated housing. Local housing laws and practices explicitly sought to restrict the neighborhoods available to black residents and other minorities. Company housing provided by large manufacturing corporations was additionally "whites-only." These practices led to overcrowding in minority-dominant areas of the city and prevented the accumulation of wealth by non-white residents. While the New Deal sought to promote economic recovery, its economic aid did little to challenge these trends.<sup>53</sup>

After the end of World War II in 1945, urban flight began as improved infrastructure began to connect the suburbs, particularly highways, water, and sewer services. As the suburbs grew, residents, manufacturing, and capital left the core of industrial cities.<sup>54</sup> This movement was further promoted by the federal government. As Cold War defensive policy, Truman's administration encouraged industrial flight from urban concentrations in order to reduce vulnerability to potential Soviet attacks. With manufacturing dispersing, and institutionalized racism restricting economic and social freedoms, discontent in cities across the country erupted into protests and riots during the late 1960s. Despite the national upheaval, and the deployment of federal troops on U.S. soil, legislation stalled until the unrest which followed Martin Luther King Jr.'s

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<sup>53</sup> Clark, *The Poisoned City*, 43-49.

<sup>54</sup> Clark, *The Poisoned City*, 49-60; Seamster, "When Democracy Disappears," 302-303.



assassination in 1968. Despite the passage of some legislation at the national, State, and local levels, segregation continued as explicit redlining and racial prohibitions morphed into less blatant restrictions. As exclusionary suburbs expanded, some action was taken at the federal level, until dismantled by the Nixon administration.<sup>55</sup>

The twin factors of industrialization and segregation, followed by urban flight, ensured that cities reliant on manufacturing lost wealth as the twentieth century progressed and that black families were robbed of financial stability and capital accumulation.<sup>56</sup> As of the 1990s, “hypersegregation” along all five major dimensions of spatial variation was endemic in America’s major urban cities, including Detroit.<sup>57</sup> Even after the turn of the twenty first century, property insurance redlining was still prevalent despite the removal of blatant discrimination from professional practice. Non-white residents were still restricted from capital accumulation, and urban areas as a whole were thus restricted in their development and prosperity.<sup>58</sup> With this structural history leaving cities hamstrung, Michigan’s State government implemented policy actively crippling local governments.

In Michigan, the financial health of local governments functionally lies in the hands of the State. Localities’ options for raising revenue are severely restricted by State law. This is especially true for property taxes, the main source of potential income for local governments, which are basically limited to the rate of inflation. Thus, localities

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<sup>55</sup> Clark, *The Poisoned City*, 49-60.

<sup>56</sup> Clark, *The Poisoned City*, 61.

<sup>57</sup> Massey and Denton, “Hypersegregation in U.S. Metropolitan Areas.”

<sup>58</sup> Squires, “Racial Profiling, Insurance Style.”

rely on revenue sharing, the distribution of funds by the State to local governments, for a significant portion of their budgets. The twin factors of twenty-first century deindustrialization and the global financial crisis drastically reduced property values, leading to a drop in cities' revenue. Local finances have been further stressed by the State government, which drastically reduced revenue sharing before the turn of the century, due to its own fiscal instability.<sup>59</sup> Michigan's State government reduced revenue sharing more than any other between 1998 and 2016, leading to a loss of around \$5.5 billion dollars for localities. Flint provides a telling example of the impact of decreased revenue sharing. From 2002 to 2014, Flint's revenue from the State was reduced by a total of \$55 million. This much money would have been more than enough to both plug holes in the city's budget and eliminate its debts.<sup>60</sup> While the State took substantial funds away from Flint, Flint was placed under Emergency Management from 2002 to 2004, and again from 2011 through 2015. When EMs were appointed, State officials blamed Flint's elected government for not fixing structural financial issues with enough urgency.<sup>61</sup>

### **Emergency Management as an Indefinite Occupation through the Eyes of Michigan Residents**

The supremacy of Dillon's Rule in the realm of American politics ensures that local governments are juridically viewed as categorically subordinate and inferior to the State government. Within this perspective, any reduction of local rule is justified and

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<sup>59</sup> Skidmore Scorsone, "Causes and Consequences of Fiscal Stress in Michigan Cities."

<sup>60</sup> Clark, *The Poisoned City*, 5.

<sup>61</sup> Goodin-Smith, "State Board OKs Giving Financial Powers Back to Flint Officials."

proper, though regularly couched in pro-democratic language. However, it is important to note that the residents of localities under EM rule viewed Emergency Management as an *occupation*.

This perspective has also been echoed by sympathetic figures within the broader political realm, judges, legislators, activists, and others who were not directly affected by management. For instance, supporters of Michigan's EM laws promoted the idea that local governments in financial distress had a choice, of which Emergency Management was only one of four options. Under PA 436 of 2012, localities could also choose to enter into a consent agreement with the State regarding its budget, bankruptcy, or mediation. However, Eric Scorsone, a researcher on State and local finance at Michigan State University, argues that the options presented are a false choice. Any decision the locality makes "has to be agreed by the state and if the state doesn't agree with the choice they can veto it, which means that the state can basically force a city" into Emergency Management.<sup>62</sup> The government of Lincoln Park pursued a consent agreement with the State and when the city council rejected the agreement with a 4 to 3 vote the State imposed an EM, instead of attempting to renegotiate.<sup>63</sup>

Once occupation by a Manager was in place, residents would have every expectation that Emergency Management would last *indefinitely*. As noted earlier, the first case of receivership with the City of Ecorse officially lasted from 1986 to 1990, but Louis Schimmel maintained some power for nine more years. Thus, Ecorse's self rule

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<sup>62</sup> "Pressure Mounts to Alter Michigan Emergency Management Law," *The Bond Buyer*, 2016.

<sup>63</sup> AlHajal, "Lincoln Park Gets Emergency Manager after Rejection of Consent Agreement."

was effectively reduced for *thirteen* straight years even in the first, and least institutionalized, case of Management.<sup>64</sup> Indeed, the most striking aspect of Emergency Management was the provision allowing a city council to remove an EM with a two-thirds vote after a year and a half. However, the State ignored its own effective term-limit by having EMs resign before the eighteen-month mark. After the appointment of a new Manager, “the clock starts over” and a local government has no further options for removing an EM.<sup>65</sup>

Residents, local officials, and judges all use the language of occupation when describing the law. Louise Seamster found this trend in interviews with residents and city government leaders of Benton Harbor. Two city commissioners discussed how they saw their encounter with Emergency Management echoed in Naomi Klein’s 2007 *Shock Doctrine*, which details “the practice of pushing through austerity programs under cover of political/economic crises.”<sup>66</sup> Another commissioner drew a haunting comparison between State EM occupation and that imposed by the United States during the Iraq Reconstruction. Even more evident in Benton Harbor, Emergency Management was a tool of occupation by more local white elites, and the Whirlpool Corporation.<sup>67</sup> Constant uncertainty driven by crises and “necessary change” leads to “its own kind of stasis” truly reminiscent of international examples of indefinite temporary occupation.<sup>68</sup>

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<sup>64</sup> LaFaive, “Privatization Brought Ecorse, Michigan, Back from Bankruptcy.”

<sup>65</sup> Clark, *The Poisoned City*, 129.

<sup>66</sup> Seamster, “When Democracy Disappears,” 305 and 319.

<sup>67</sup> Seamster, “When Democracy Disappears,” 305.

<sup>68</sup> Seamster, “When Democracy Disappears,” 304.

This view of Emergency Management as an occupation and democratic usurpation is not limited to the residents of Benton Harbor. In February of 2013, Oakland County Circuit Judge Rae Lee Chabot ruled against Louis Schimmel's move reducing the size of Pontiac's pension board, remarking that Schimmel's decision "looks like a dictatorship."<sup>69</sup> After saying that he would respect Judge Chabot's decision,<sup>70</sup> Schimmel again attempted to reduce the size of the pension board. This led to a Wednesday morning ordinance hearing on May 1st, 2013 in which former Mayor Walter Moore, a trustee on the board, yelled "You're a carpetbagger!" at Schimmel. Resident Warren Rodgers also remarked that "This is democracy lost" and compared Emergency Management to slavery.<sup>71</sup>

After the passage of PA 436 of 2012, Ray Holman, a lobbyist with UAW 6000 Local which represents about 17,000 state employees, remarked that "ultimately, it's a dictator's law."<sup>72</sup> In early 2013, The American Federation of State, County and Municipal Employees along with 21 residents of Detroit, Flint, and Benton Harbor filed a lawsuit opposing PA 436 of 2012 for voting rights and Constitutional civil rights violations, due to the suspension of local rule for 53% of Michigan's black residents. The lawsuit held that "Public Act 436 establishes a new form of local government ... [in which] an unelected official ... establishes local law by decree." A plaintiff from Flint, Bishop Bernadel Jefferson, contrasted Emergency Management with democracy, stating

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<sup>69</sup> The Associated Press, "Judge Rules against Pontiac Emergency Manager on Pensions."

<sup>70</sup> *ibid.*

<sup>71</sup> Blitchok, "Emergency Manager, Former Mayor Spar at Pontiac Hearing."

<sup>72</sup> White and The Associated Press, "New Emergency Manager Law Signed in Michigan; Still 'a Dictator's Law,' Critic Says."

that “We shouldn't have an EM at all. This is a free country.” In response, Governor Snyder’s spokesperson, Sara Wurfel, echoed Dillon’s rule, asserting PA 436’s constitutionality due to the fact that “local governments are subdivisions of the state.”<sup>73</sup> Emergency Management as occupation, or dictatorial rule, was even acknowledged by leading members of Michigan’s Republican regime. Ken Sikkema, former State Senate majority leader for the Republicans, co-chaired Governor Snyder’s 2016 task force reviewing the EM law and its application in Flint. Sikkema remarked that Emergency Management is “the old theory of the benevolent dictator. Dictators work if you have a benevolent one, but what if you don’t? That’s a fundamental flaw in the current EM structure.” Recommendations by that task force were never implemented during the period of active EMs.<sup>74</sup>

With Governor Snyder’s own task force even acknowledging the dangerous democratic suspension of Emergency Management, it is clear that Michigan’s residents saw Management as an occupation by the State, run by appointed dictators. While alternatives to Management existed, the State effectively had the final say, and could force reluctant localities into EM rule. This occupation was functionally indefinite in practice, with numerous EMs lasting longer than an eighteen-month tenure due to the State’s habit of resetting the clock with new appointments. Finally, residents, local officials, judges, state employees, and Republican State legislators all recognized these

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<sup>73</sup> AlHajal, “Lawsuit: Emergency Manager Law Creates ‘New Form of Government’.”

<sup>74</sup> Oosting, “Michigan: No Emergency Managers for First Time since '00.”

facts. Their concerns are evident in the numerous comparisons of Management to dictatorship, as well as the Iraqi Reconstruction and slavery.

### **Occupation for Elite Benefit**

On the surface, proponents of Emergency Management claimed that it benefited local residents. An EM may have provided tough medicine, in the form of “government chemo,”<sup>75</sup> but it was designed with citizens in mind. However, while Emergency Management was ineffective at reducing local financial instability in the long term,<sup>76</sup> EM rule was effective at enriching local and locally connected elites. This impact is evident in the gains made by firms associated with Emergency Management. The deals and contracts made on behalf of a local government, at the EM’s sole discretion, had a habit of personally enriching firms and promoting their interests. Additionally, municipal bondholders were explicitly protected under Emergency Management.

An EM’s complete control over decision-making for a locality places them in the perfect position to distribute a government’s resources for a firm’s benefit. The city of Benton Harbor is tied to the Whirlpool Corporation, manufacturer of household appliances. Whirlpool has a large amount of power in local decision-making due to its large funds, network of non-profit organizations, and connections to public officials.<sup>77</sup> Traditionally, the policies of Benton Harbor’s city managers were usually captured through the influence of one of Whirlpool’s nonprofit organizations. This generally

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<sup>75</sup> Seamster, “When Democracy Disappears,” 304.

<sup>76</sup> Clark and Gorina, “Emergency Financial Management.”

<sup>77</sup> Seamster, “When Democracy Disappears,” 302-303.

resulted in the city commission firing the manager.<sup>78</sup> Benton Harbor's first EM, Joseph Harris also followed Whirlpool's preferences and was only fired "after *Whirlpool* and [local] government representatives met with state leaders [emphasis added]."<sup>79</sup> This case is illustrative of the enduring force elites have under Emergency Management, highlighting that only the democratically elected government is disabled.

In Detroit, generally considered the most effective instance of Emergency Management, EM Kevyn Orr ensured that a firm personally connected to him benefited from the city's bankruptcy. Before he was an EM, Orr worked as an attorney for the law firm Jones Day.<sup>80</sup> As Orr led Detroit into bankruptcy filing, Jones Day was hired to provide the leading attorneys for the case. The firm was initially contracted for \$3.35 million, which was later expanded to \$18 million. In order to pay these and other legal fees, Orr had to divert money from the city's pension and debt payments.<sup>81</sup> These payments generated controversy not only for their size, but for the fact that attorneys billed the city for flights to and from their vacation homes, as well as expensive chauffeur services.<sup>82</sup> Under Orr, the city of Detroit ended up paying \$170.2 million for expenses related to the bankruptcy case. Jones Day was the largest recipient of these payments, earning \$57.9 million alone.<sup>83</sup>

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<sup>78</sup> Seamster, "When Democracy Disappears," 305.

<sup>79</sup> Seamster, "When Democracy Disappears," 306.

<sup>80</sup> Snell, "Bankruptcy Lawyer Billed Detroit \$34K for Florida Travel."

<sup>81</sup> Lichterman, "Detroit Has Paid \$23 Million to Consultants through October 1."

<sup>82</sup> Snell, "Bankruptcy Lawyer Billed Detroit \$34K for Florida Travel."

<sup>83</sup> Ferretti and Snell. "Detroit Bankruptcy Fees Top \$170M."



Flint's water crisis, and the tragedy of mass poisoning and administrative neglect which followed, began with a switch from water provided by the Detroit Water and Sewerage Department (DWSD) to drawing water from the Flint river. The river's water was sent through the city's old water treatment plant, which was not sufficiently upgraded to provide corrosion control to water from the Flint river. Corrosive water flowing through the city's old lead pipes wore away the protective coating, damaging infrastructure and poisoning city residents.<sup>84</sup> EM Ed Kurtz ostensibly made the decision to switch water supplies for the benefit of Flint's residents, who paid monthly water bills almost twice the state average. However, these high rates appear to be the result of EM decisions, and not charges by DWSD before the switch.<sup>85</sup> In order to solve this self-made problem, EM Kurtz proposed a solution in the form of a private water utility: the Karegnondi Water Authority (KWA). The engineering firm Tucker, Young, Jackson, Tull (TYJT) was hired to evaluate Flint's water service options, but their report in February 2013 was critical of participation in the KWA pipeline. This advice was ignored. A subsequent report from Rowe Professional Engineering, which had produced dubious estimates for Flint before, recommended the KWA option.<sup>86</sup> Rowe had a stake in the construction of the KWA pipeline.<sup>87</sup> During this time, DWSD had been issuing attractive offers to Flint. In April of 2013, the DWSD offered a plan which would save the city 50% of what it paid at the time, as well as 20% more than the KWA option. This

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<sup>84</sup> Hammer, "The Flint Water Crisis," 114.

<sup>85</sup> Stanley, "The Emergency Manager," 34.

<sup>86</sup> Hammer, "The Flint Water Crisis," 111.

<sup>87</sup> Stanley, "The Emergency Manager," 35-36.

offer was rejected out of hand.<sup>88</sup> In order to participate in the more expensive KWA service EM Kurtz, along with State officials and the KWA, distorted bond finance regulations to obtain an Administrative Consent Order allowing the already fiscally burdened city to acquire more debt. During the 30-month period before the pipeline was built, the city was forced to rely on its aging water treatment plant. While EM Kurtz had fastidiously pursued approval of the KWA project, he had failed to procure sufficient funds to upgrade the plant in time, resulting in horrific tragedy.<sup>89</sup> This EM-led decision, which placed Flint into \$81 million worth of unnecessary debt and poisoned its residents, provided the last funds KWA needed to construct its pipeline. EM Kurtz was the decision-maker necessary to actualize a private water utility to compete with, and weaken, the public DWSD.<sup>90</sup>

Beyond the enrichment of individual well-connected firms, Emergency Management was explicitly designed to serve municipal bondholders and protect their interests. Because municipal bonds are taken out by governments with tax-collecting powers, private equity generally receives stable earnings from providing these loans. Through the Emergency Management laws passed under Governor Snyder's administration, EMs have extreme unilateral powers, including the ability to sell public assets and break union contracts. However, EMs are unable to challenge contracts made with bondholders, despite the fact that these contracts are a primary source of municipal fiscal stress. EMs are even restricted from renegotiating when there is public knowledge

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<sup>88</sup> Hammer, "The Flint Water Crisis," 111-112; Stanley, "The Emergency Manager," 36.

<sup>89</sup> Hammer, "The Flint Water Crisis," 112.

<sup>90</sup> Stanley, "The Emergency Manager," 36-37.

that municipal bondholders acted fraudulently. While Managers are restricted from renegotiating bond contracts, they are able to renegotiate interest rate swap contracts. However, they *fail to do so*. In Detroit's bankruptcy case, EM Orr did not challenge swap contracts with UBS and Bank of America, despite the fact that they acted fraudulently and the city could have recouped some of its money. Instead, Orr settled with the companies, and *paid them \$465 million* for contracts which Federal Judge Stephen Rhodes viewed liable to be thrown out if challenged.<sup>91</sup> During the city of Detroit's bankruptcy proceedings, Orr also had the city assume the *\$5.8 billion debt* of the similarly named, but institutionally separate, regional public utility: the Detroit Water and Sewerage Department (DWSD). There is no clear explanation for how assuming this debt aided the city of Detroit. However, this move ensured that DWSD's debtors would be paid, and that Detroit's debt was higher on paper, strengthening the case for bankruptcy.<sup>92</sup> Additionally, while the Flint Water Crisis destroyed residents' health, and tarnished the (fiscal) reputations of the State and local governments, creditors benefited from exceptionally high returns.<sup>93</sup> EM Joyce Parker of Ecorse went an extra step to ensure creditors' income, pushing for a law which allows small cities to contract out tax collection. The tax collection agency would explicitly divert funds away from the local government to debtholders. For localities, the only apparent advantage appears to be an improvement in their credit rating.<sup>94</sup>

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<sup>91</sup> Stanley, "The Emergency Manager," 16-21.

<sup>92</sup> Stanley, "The Emergency Manager," 30-32.

<sup>93</sup> Murphy, "In Service of Creditors."

<sup>94</sup> Dykstra, "After Emergency Manager."

The implementation of Emergency Management has consistently led to benefits for elites connected to the city, the EM, and the State. In Benton Harbor, EMs enabled the goals of the Whirlpool corporation and its affiliates, and served at their pleasure. During the Detroit bankruptcy case, the city's law firms earned over \$170 million, with the EM's former employer as the highest recipient. Through Flint EM Kurtz, State elites were able to actualize their goal of establishing a private water utility and weakening a traditional public service provider. Within the structure of the law, and EM practice, the interests of private holders of municipal bonds also received special regard.

### **The Limitations of Michigan's Subnational Occupation**

As suggested by the framework of subnational authoritarianism, SITO thrives when it is ignored by national political actors. In particular, it requires sympathetic ears in the national judiciary and is threatened by the attention of the national ruling party. Both of these facets are evident in Michigan's Emergency Management policy. While Michigan residents filed multiple lawsuits challenging the unconstitutional and discriminatory aspects of EM-rule, judges consistently decided in the State's favor. The active Emergency Management of Michigan's localities ended before national attention to the actions of EMs in the Flint water crisis began in January of 2016. Thus, the national government did not have a window of overlap for applying pressure to the State. Since then, prosecution of individuals involved in the water crisis has fallen to the State Attorney General, and a change in party control has highlighted the inadequacies of allowing a regime to police itself.

Two major lawsuits were filed in federal court against PA 436 of 2012. Both failed to overturn EM-rule. The first, *Phillips et al. v. Snyder*, was filed in 2013, holding that PA 436 was unconstitutional illegitimate because:

“(1) the Due Process Clause of the Fourteenth Amendment to the United States Constitution; (2) the Guarantee Clause of Article IV, § 4 of the United States Constitution; (3) the Fourteenth Amendment’s Equal Protection Clause by burdening their right to vote and by discriminating against African Americans, the poor, and those entities that had emergency managers under the previous laws; (4) § 2 of the Voting Rights Act (VRA); (5) the First Amendment by engaging in viewpoint discrimination and infringing on plaintiffs’ freedom of speech, freedom of association, and right to petition their government; and (6) the Thirteenth Amendment.” (*Phillips et al. v. Snyder* 2016, page 5).

In 2014, Judge George Steeh, United States District Judge for the Eastern District of Michigan, initially rejected all of these measures except for the claim that PA 436 unduly burdened the right to vote of African Americans.<sup>95</sup> However, on appeal to the US Sixth Circuit Court of Appeals, the panel dismissed all of the plaintiffs’ grievances. The court notably echoed Dillon’s rule by referencing “the Supreme Court’s venerable holding that

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<sup>95</sup> The Associated Press Wire Reports, “Court Rejects Challenge to Michigan’s Emergency Manager Law.”

states have ‘absolute discretion’ in allocating powers to their political subdivisions (and therefore to the officers running those subdivisions), which are ‘convenient agencies’ created by the states.”<sup>96</sup> Drawing on extensive precedent, the Sixth Court’s opinion holds that there is no right to elected local government and that States have the full ability to eliminate the positions of elected officials.<sup>97</sup> State governments are also fully capable of establishing a patchwork of local governments, with elected officials in some jurisdictions and appointed officials in others.<sup>98</sup> Lastly, the Court of Appeals rejected claims of racial discrimination, holding that as long as a law was “facially neutral” actual disenfranchisement of ethnic communities is fully legal.<sup>99</sup> The case was petitioned to the US Supreme Court in March 2017, but was rejected in October of that year.<sup>100</sup> A second lawsuit was filed in late 2017 alleging that the law targeted black communities, but has also been unsuccessful.<sup>101</sup>

While the federal courts with jurisdiction over Michigan supported EM-rule, federal prosecutors were the department responsible for holding State officials accountable following the Flint water crisis. Michigan’s Republican Attorney General (AG) Bill Schuette charged multiple state employees and officials over the water crisis between 2016 and 2017.<sup>102</sup> However, pending charges were later dropped in 2019 after the new AG’s office, led by Democrat Dana Nessel, found that the Office of Special

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<sup>96</sup> *Phillips et al. v. Snyder* 2016, 8.

<sup>97</sup> *Phillips et al. v. Snyder* 2016, 9 and 12.

<sup>98</sup> *Phillips et al. v. Snyder* 2016, 13-14.

<sup>99</sup> *Phillips et al. v. Snyder* 2016, 18.

<sup>100</sup> “Emergency Manager Law,” ACLU Michigan.

<sup>101</sup> McVicar, Brian. “Michigan’s Emergency Manager Law Is Racist, Lawsuit Argues.”

<sup>102</sup> CNN Editorial Research, “Flint Water Crisis Fast Facts.”

Counsel (OSC) appointed by then-former AG Schuette had proceeded improperly in the investigations. The OSC had provided the defendants' private law firms with the extraordinary ability to determine what information was revealed to law enforcement.<sup>103</sup> On January 14th of 2021, the office of AG Nessel charged nine State officials, including former Governor Snyder, with criminal charges related to Flint's water crisis. In the announcement, this refiling of charges is explicitly stated as a follow-up to the problems found under AG Schuette.<sup>104</sup> This saga of State prosecution highlights the limitations in accountability which regional officials can provide. Without a change in party control, which did occur, or systematic pressure from the national government, which did not, State officials would have likely faced less severe penalties for their role in the Flint water crisis. The absence of national-level pressure on Michigan's Emergency Management policy is likely related to failures in holding individuals accountable, even in the most egregious case.

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<sup>103</sup> "Flint Water Prosecution Team Expands Investigation Based on New Evidence," Michigan.gov; Sun and Bellamy-Walker. "Prosecutors Drop Criminal Charges in Flint Water Scandal."

<sup>104</sup> "Nine Indicted on Criminal Charges in Flint Water Crisis Investigation," Michigan.gov.

## INDEFINITE TEMPORARY OCCUPATION AND THE FUTURE OF MICHIGAN'S CITIES

As shown above, the Emergency Management of local governments in the State of Michigan can be effectively described through the framework of SITO. Officially, the last city was removed from management in 2015, a momentous occasion after 15 years with at least one local government under democratic suspension at a time.<sup>105</sup> However, the lens of SITO forces observers to look beyond this apparent resumption of democracy and analyze the ways in which formerly-managed local governments suffer from *continuing* democratic suspension by the State. After the departure of an EM, local governments suffer from financial instability, reduced institutional capacity and memory, as well as the entrenchment of undemocratic institutions. These three factors ensure that communities' democratically elected leaders face difficulties in governing effectively on behalf of their constituents, due to looming financial woes, decreased capabilities, and continuing explicit (though non-publicized) control by the State of Michigan.

### Financial Instability

Although Emergency Management is explicitly designed to improve local government's fiscal health, it usually hampers a locality's comprehensive financial stability. While EMs appear to reduce short-term debt, this is usually due to an increase in long-term debt. Additionally, EMs usually leave two-year budgets behind after their departures, hampering the ability of elected leaders to adapt to new issues in the near

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<sup>105</sup> AlHajal, "No More Emergency Managers in Michigan Cities."



term. These practices reduce the financial stability of local governments upon their return to self-rule.

Despite State-promoted narratives around Emergency Management rescuing local governments from financial ruin, EM performance on promoting long-term fiscal health has been lackluster. This failure is immediately evident from the fact that Hamtramck, Flint, Highland Park, and Ecorse received multiple separate instances of Emergency Management.<sup>106</sup> A deeper analysis of Hamtramck, Highland Park, and Ecorse illustrates how EMs (including the ever-present Louis Schimmel in Hamtramck from 2000 to 2007) utilized financial management to provide the appearance of recovery while undermining cities. In each of these localities, EMs addressed budget deficits and short-term debt problems by issuing vast quantities of long-term debt. Under EM-rule from 2003 to 2010, Highland Park's debt load increased from \$904 to \$4135 per capita.<sup>107</sup> Ecorse's debt increased from \$478 per capita under EM Parker in 2009 to more than \$1900 in 2013, her last year.<sup>108</sup> In Hamtramck, EM Schimmel also issued long-term debt to replace short-term obligations. The overall debt per capita decreased from a high of \$316 in 2005, his penultimate full year of rule, to \$52 in 2014.<sup>109</sup> Also, none of the cities durably improved their pension funding ratios, a primary indicator of fiscal health, because of Management.<sup>110</sup> These increases in debt, to the detriment of a locality's financial stability, echo previously noted decisions taken regarding funding for the KWA

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<sup>106</sup> Clark and Gorina, "Emergency Financial Management," 536.

<sup>107</sup> Clark and Gorina, "Emergency Financial Management," 549.

<sup>108</sup> Clark and Gorina, "Emergency Financial Management," 552-553.

<sup>109</sup> Clark and Gorina, "Emergency Financial Management," 544-545.

<sup>110</sup> Clark and Gorina, "Emergency Financial Management," 555.

during Flint's Emergency Management,<sup>111</sup> and the DWSD's debt during Detroit's bankruptcy.<sup>112</sup> Overall, EMs are liable to provide short-term solutions while increasing long-term debt without any real benefit to residents.

Before an EM departs, they are required to draw up a two-year budget to constrain elected officials in the near-term. A local government is unable to ignore this budget without the consent of the State Treasurer, who helps initiate Emergency Management in the first place.<sup>113</sup> As with every other aspect of EM policy, this restriction is ostensibly in place to help localities by preventing them from returning to their previous practices. Since EMs seem to actually increase the debt burden of local governments, this budgetary constraint appears to harm financial health by reducing the speed at which debt may be paid off. Even beyond addressing the debt accumulated by EMs, this budget reduces the ability of a government to quickly respond to changing economic circumstances. While localities may appeal to the State Treasurer, this merely puts them at the mercy of the State government once again.

### **Reduced Institutional Capacity and Memory**

In EMs' efforts to slash the size of local governments and their spending, EMs actively reduce the capabilities of localities. After Emergency Management, cities are left with fewer physical property assets and less office space. EMs also reduce the size and capacity of local first responders. Most crucially, EMs have a habit of reducing the

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<sup>111</sup> Stanley, "The Emergency Manager," 36-37.

<sup>112</sup> Stanley, "The Emergency Manager," 30-32.

<sup>113</sup> Gregg and Mears, "Michigan's Emergency Financial Manager Law"

ability of local institutions to ensure accountability to their constituents by weakening oversight organizations and harming the institutional memory of local governments. All of these decisions hamper the ability of future elected governments to govern, provide services to residents, and remain accountable to local citizens.

The expansion of EM authority under Governor Snyder enabled EMs to unilaterally sell off city property. While this ostensibly enabled EMs to raise funds for local governments, they repeatedly made sales which under-valued the properties and ignored the non-commercial value of assets.<sup>114</sup> In Pontiac, the EM auctioned off the Pontiac Silverdome to an investor for \$580,000. This sale vastly undercut the city, as the Silverdome had received an \$18 million bid the previous year and had been assessed for a market value of \$7 million. EM Orr of Detroit repeatedly threatened to sell items from the Detroit Institute of Art and also proposed selling city land for the construction of a bridge between the US and Canada. Both proposals were only withdrawn after sustained and organized public outcry.<sup>115</sup> In Benton Harbor, EM Harris sold parkland and undercut future park funding in order to promote the Whirlpool Corporation's plans for the development of a substantial golf course.<sup>116</sup> Flint's EM Darnell Earley sold a portion of the city's water pipeline to Genesee County over the city council's objections. Following the end of Emergency Management in Flint and the city's return to DWSD, the city had to lease back the pipe.<sup>117</sup> One of Flint's EMs even attempted to get rid of the city's

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<sup>114</sup> Fasenfest, "A Neoliberal Response to an Urban Crisis," 42.

<sup>115</sup> Fasenfest, "A Neoliberal Response to an Urban Crisis," 45.

<sup>116</sup> Seamster, "When Democracy Disappears," 306.

<sup>117</sup> Fasenfest, "A Neoliberal Response to an Urban Crisis," 40-41.

collection of Christmas decorations.<sup>118</sup> In each instance, EM-led sales of city property undercut the finances of the local government. Furthermore, they reduced the localities' abilities to maintain non-economic services: provide a local sports venue, maintain reputable art institutions, expand green and recreational space for residents, and provide clean water at reasonable rates. All of these actions, once undertaken, are difficult or impossible for future officials to reverse.<sup>119</sup>

Another common tactic of EMs was to reduce the size of local first responders, particularly firefighters and police officers. In Pontiac, EM Schimmel shut down the city's police department and outsourced the jobs to the Oakland County Sheriff's Office. He did the same with the city's fire department, outsourcing it to the neighboring township of Waterford. Ecorse's EM Parker fired police officers and firefighters, merged both departments into one, and trained the remaining employees to perform both jobs.<sup>120</sup> On behalf of Benton Harbor, EM Harris also combined the fire and police departments while generally firing "essential personnel."<sup>121</sup> In Flint, EM Brown unilaterally instituted a contract which reduced police pay, increased the length of their shifts, and enabled the use of volunteers or part-time officers to replace full-time police officers.<sup>122</sup> EM Orr of Detroit rendered the city's Detroit Board of Police Commissioners impotent, preventing the civilian oversight committee from holding the police department accountable.<sup>123</sup> All

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<sup>118</sup> Fasenfest, "A Neoliberal Response to an Urban Crisis," 45.

<sup>119</sup> Holeywell, "Michigan's Emergency Manager Law Suspended."

<sup>120</sup> Trenkner, "Emergency Financial Managers: Michigan's Unwelcome Savior."

<sup>121</sup> Seamster, "When Democracy Disappears," 306.

<sup>122</sup> Adams, "A Look at What the State's Emergency Managers Did While in Flint."

<sup>123</sup> Ferretti, "Council to Vote on Restoring Police Commission Powers."

of these changes reduced the capacity of local first responders as well as their ability to provide engaged, accountable services to residents. The necessity of professional, local, and responsive emergency services is particularly important due to the large minority populations in these localities and historically fraught relationships between residents and first responders. EMs repeatedly and explicitly worked against these aims, prizing fiscal returns (or police impunity in Detroit) over effective governance.

Under Emergency Management, cities also tend to lose general institutions for accountability in governance. As an EFM in Hamtramck in 2001, EM Schimmel sought to sell off the City Hall and ‘lay off’ one of the two local judges.”<sup>124</sup> This remarkable goal is highlighted by the fact that Schimmel had these goals under the “weaker” Emergency Financial Management system. Before Management, the city of Flint had an Office of the Ombudsman responsible for monitoring mismanagement and corruption in governance. EM Ambrose eliminated this Office and explicitly prevented Flint from re-instituting it after his departure.<sup>125</sup> In Benton Harbor, EM Harris took the illegal move of placing the city’s radio station, and its equipment, up for sale on eBay. This action was both illegal and a likely reaction to a city commissioner’s criticism of EM-rule during radio broadcasts. He also sought to reduce financial oversight of local government. EM Harris’s sale of the City Hall administrative building and firing of vast numbers of city employees harmed institutional capability and memory, further impairing oversight.<sup>126</sup> During the lengthy periods of EM-rule in Pontiac, the amount of city employees was also

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<sup>124</sup> Bardallis, “Emergency Financial Manager to Help Hamtramck Balance the Books.”

<sup>125</sup> Clark, *The Poisoned City*, 129.

<sup>126</sup> Seamster, “When Democracy Disappears,” 306.

reduced from 900 in the early 2000s to 74 in 2013.<sup>127</sup> As in Benton Harbor, this action likely also eviscerated the city's know-how and ability to meet its resident's needs. Overall, these EM decisions highlight a regular effort to kneecap local governments and their ability to serve constituents.

### **Entrenchment of Undemocratic Institutions**

The most insidious aspect of Emergency Management is the continuing control of State-appointed technocrats after the public departure of an EM. These appointed positions either temporarily (indefinitely) defer, or permanently prevent, a resumption of democracy in local government comparable to levels citizens enjoyed before Management.

In terms of indefinite temporary institutions reducing democratic control, the administration of Governor Rick Snyder ensured that departing EMs established a Receivership Transition Advisory Board (RTAB) in every city that left Emergency Management under his tenure. Ecorse, Pontiac, Benton Harbor, Allen Park, Hamtramck, Flint, and Lincoln Park all received RTABs from April 2013 through December 2015.<sup>128</sup> In some cases, former EMs also serve on these boards.<sup>129</sup> Members were also associated with local elites and firms who had benefited from Emergency Management, like the Whirlpool Corporation in Benton Harbor.<sup>130</sup> Officially, an RTAB is provided for under

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<sup>127</sup> Cournoyer, "How Emergency Financial Managers Changed Michigan."

<sup>128</sup> Resolving Financial Emergencies in Michigan, (n.d.).

<sup>129</sup> Municipal Financial Consultants Incorporated, "Former Pontiac Emergency Manager Louis H. Schimmel."

<sup>130</sup> Seamster, "When Democracy Disappears," 317.

Public Act 436 of 2012 and charged with ensuring a local government's "fiscal and organizational stability" after the departure of an EM.<sup>131</sup> Explicitly, Section 21(2) of PA 436 provides for an RTAB to mandate a budget, which the local government cannot amend without State Treasurer approval. However, Section 23(5)(h) instructs the RTAB to conduct "any other duties assigned by the governor at the time the [RTAB] is appointed." This vagueness can provide RTABs with the grounds to take exceptional actions to restrict the abilities of democratically elected officials, or at least attempt to do so, *even after an EM leaves*.

For instance, the Mayor of Flint, Karen Weaver, took procedural steps in early 2016 necessary to maintain the option of suing the State government for the city's water crisis. In response the RTAB, *which consists primarily of the governor's appointees*, voted in March of 2016 that all litigation pursued by the city must be approved by the board. In October of that year, Michigan's Democratic members of the US Congress asked the Department of Justice to evaluate the decision-making of Flint's RTAB. The following day, the board amended its previous decision so that only the settlement of any litigation requires the RTAB's approval.<sup>132</sup> While Flint's RTAB voted to end its control on Jan. 11, 2018,<sup>133</sup> some measure of State control remained until April of that year.<sup>134</sup> As Flint exited Emergency Management in April 2015, it is interesting to note that a measure of democratic suspension remained for three full years after the public end of

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<sup>131</sup> "RTAB," City of Flint, 2018.

<sup>132</sup> Detroit News Staff and Wire Reports, "State Board Lets Flint Sue without Needing Approval."

<sup>133</sup> Goodin-Smith, "State Board OKs Giving Financial Powers Back to Flint Officials."

<sup>134</sup> "RTAB," City of Flint, 2018.

EM rule. While the RTABs for every city had recommended the termination of receivership status by March 2nd of 2018 (with Hamtramck being the last),<sup>135</sup> the tenure of these boards was seen by observers as indefinite upon their appointment.<sup>136</sup> The city of Ecorse was overseen by an RTAB for the longest period. From its first meeting on June 11th, 2013 until its exit letter to the mayor on December 18th, 2017 the board constricted democratic leaders for a total of four years and six months.<sup>137</sup>

The city of Detroit received a special form of RTAB. Instead of the normal board, Detroit received the Detroit Financial Review Commission (FRC). As part of the city's bankruptcy deal in 2014, the FRC was instituted for a 13-year term. The Commission was tasked with approving Detroit's budgets, any collective bargaining, and large contracts.<sup>138</sup> Eleven members serve on the FRC, five appointed by the State, the State Treasurer and Budget Director, Detroit's Mayor and City Council President, along with the Superintendent and School Board Chairperson for the Detroit Public Schools Community District.<sup>139</sup> In 2018, the FRC decided to lift its direct control over Detroit's budget, a move democratic actualization greeted with joy in the city government. However, the FRC will remain in place until 2017, meeting twice a year and capable of resuming direct oversight *at any time* the city runs a budget deficit.<sup>140</sup>

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<sup>135</sup> "Financial Emergency Information City of Hamtramck," Michigan Department of Treasury.

<sup>136</sup> AlHajal, "Ecorse Escapes Emergency Manager, but State Keeps Oversight Indefinitely," 2013.

<sup>137</sup> "Financial Emergency Information City of Ecorse," Michigan Department of Treasury.

<sup>138</sup> Pratt, "Is Detroit's Financial Oversight Board Too Big to Succeed?"

<sup>139</sup> "Detroit Financial Review Commission," Michigan Department of Treasury.

<sup>140</sup> Williams, "Detroit Released from State Financial Oversight 3 Years after Exiting Bankruptcy."



Beyond these temporary, but indefinite, institutions of State financial oversight, EMs also sought to permanently alter the very structure of local governments, reducing the number and strength of elected officials. Before Emergency Management, most local governments had strong elected city commissions or councils along with mayoral seats. This form of governance is contrasted with that of a “city manager,” an appointed official who rules, usually in conjunction with an elected council. In Benton Harbor, the first EM, Harris, pushed multiple city ballot items which would have diminished the size and power of the elected city commission in favor of strengthening the city manager. The city’s second EM, Saunders, actualized this scheme, bolstering the power of Benton Harbor’s city manager. While leaving, EMs also created or amplified appointed city manager, or city administrator, positions in Allen Park, Hamtramck, Pontiac, and Flint.<sup>141</sup> In Ecorse, EM Parker accepted emergency loans from the State on behalf of the city. These loans required that Ecorse implement a city administrator position, one which EM Parker delineated the qualifications for.<sup>142</sup> While Allen Park,<sup>143</sup> Flint, and Pontiac<sup>144</sup> have removed their city managers, the other localities have not been so lucky. Hamtramck has had at least four city managers since 2012, often with fractious relations with the elected city council.<sup>145</sup> Despite this turnover, the position appears to be durable

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<sup>141</sup> Seamster, “When Democracy Disappears,” 317.

<sup>142</sup> Clark and Gorina, “Emergency Financial Management,” 550-551.

<sup>143</sup> Seamster, “When Democracy Disappears,” 317.

<sup>144</sup> Gross, “State Relaxes Oversight of Pontiac, Returns Control to Mayor and Council.”

<sup>145</sup> Sercombe, “Former City Manager Settles for \$142,000 for Firing,” CBS Detroit, “Hamtramck Proposes Partnership With Detroit Fire Department;” Jackman, “Charges of Collusion and Other Drama at Hamtramck City Council Last Night;” “City Manager,” City of Hamtramck Michigan.

because Hamtramck has a \$3 million loan which requires a city manager.<sup>146</sup> Ecorse's city administrator is protected by a similar loan deal, but the city would also require the approval of the state treasurer before firing the appointee.<sup>147</sup>

Even after the public departure of an EM, management continues through the financial oversight of RTABs and Detroit's FRC as well as more permanent changes to a local government's structure. These institutional alterations ensure that elected leaders, and thus their constituents, receive a weaker and more constrained democracy after Emergency Management ends. Appointed institutions generally favor local white elites over actual residents, who are often black. The reduction of power is justified by racialized narratives of corruption and "mismanagement."<sup>148</sup> The utility and skills of appointed leaders are rationalized through undemocratic narratives of "technocracy" which prize professionalized skills and denigrate the sometimes chaotic processes of democratic policy making.<sup>149</sup> When reviewing systemic-issues cities under Emergency Management, the consistency with which different EMs in different localities employ similar tactics highlights the fact that continuing democratic suspension is a feature of Management, not a bug.

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<sup>146</sup> Jackman, "Charges of Collusion and Other Drama at Hamtramck City Council Last Night."

<sup>147</sup> Dykstra, "After Emergency Manager."

<sup>148</sup> Seamster, "When Democracy Disappears."

<sup>149</sup> Stanley, "The Emergency Manager."

## CONCLUSION

Over the 3 decades since Louis Schimmel was appointed receiver of Ecorse by a State judge in 1986, Michigan has developed a robust institution for undermining local democratic governance. The most recent law, PA 436 of 2012, remains on the books with little prospect of revision or removal. During this time, Louis Schimmel has served as the backbone and architect of Emergency Management legislation, as the first receiver and as a think tank-writer, along with EM implementation, publicly ruling three cities for 13 years. Throughout Emergency Management, a bifurcation has appeared between richer, majority-white single-issue cities and their counterparts facing systemic-issues. This work primarily focuses on those systemic-issues cities because of the breadth and depth of EM disruption within them.

Previous scholars have attempted to assess Emergency Management through the frameworks of public administration and discriminatory policy. The public administration literature accurately addresses the effectiveness, or lack thereof, of EMs, but fails to reach beyond common quantitative metrics. Through the lens of discriminatory policy, researchers have done significant work highlighting the racialized aspects of EM-rule, as well as the ways in which Emergency Management is a continuation of historic trends of systemic discrimination and racism. By drawing on a fusion of international literature on indefinite temporary occupation, along with Robert Mickey's exploration of subnational authoritarianism in *Paths out of Dixie*, subnational indefinite temporary occupation (SITO) synthesizes and complements the literature. With the framework of SITO, knowledge from public administration is enhanced through

an extension of analysis backwards in history and a recognition of the ways in which an EM can harm a locality beyond accruing debt. Discriminatory policy literature is also advanced through SITO by a recognition of Emergency Management's uniqueness. In no other circumstance has one individual been vested with the power to wreak such havoc on local government. Both facets of previous research are enhanced by a recognition that EM driven disruption is not merely a reflection of contemporary or historic trends, but also continues to reverberate after their departure.

Regardless of the founder's original views on local governance, the supremacy of Dillon's Rule over Cooley's Doctrine has juridically enshrined the subordination and frailty of American local democracy. This institutional narrative, couple with structural urban disinvestment and systemic racism, provided the perfect environment for Michigan's Emergency Management policy. Once implemented, "managed" citizens and myriad State elites recognized EM-rule as a form of indefinite occupation and democratic suspension at the hands of a local "dictator." Occupation by the State government allowed elites to leverage the resources of localities for profit and the realization of their policy preferences. Emergency Management allowed elites to capture these opportunities, silence traditional democratically-elected opposition, and was contingent on their assent. This uncertain stasis thrived under Republican regime continuity and the consent or distraction of national government institutions.

Looking forward, Michigan's cities which underwent Emergency Management were returned to democratic rule far worse for wear. Localities were generally more financially unsound afterwards than before, with the worst problems deferred.

Governments are also far less capable of governing, retaining less institutional memory and suffering from eviscerated capacity for action. The foundational structures and autonomy of these cities are also weakened after EM departure. Financial independence is restricted for years after an EM's headline departure fades. More power amongst governing officials is invested in appointed positions, and the local government as a whole is less accountable.

As the time since the last active EM lengthens, the framework of SITO helps illuminate why studying this phenomenon in Michigan matters. Principally, the juridical factors enabling the State occupation of local governments are still strong and look to remain so for the foreseeable future. The US's State governments continue to wield exceptional autonomy, the Dillon's Rule absence of a right to local self-governance is enshrined in legal thought, and PA 436 of 2012 remains in place. It is easy to imagine a world in which another Republican Governor wins Michigan's 2022 gubernatorial election and seeks to "manage" localities which have suffered from economic downturns during the COVID-19 pandemic. Furthermore, the ascension of Betsy DeVos to Education Secretary under President Trump shows the impact that Michigan's proponents of neoliberal policy can have on the national stage. Supporters of Emergency Management saw their transformations of local governments as a fundamental transformation into a new, and better, form of government.<sup>150</sup> Even beyond State-led

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<sup>150</sup> Gilroy and LaFaive. "From Traditional to Contract City: Navigating Financial Distress in Pontiac."

initiatives, private philanthropies have also sought to control local policy in the long-term.<sup>151</sup>

At the beginning of *Paths out of Dixie*, Mickey states that “‘backsliding’ into authoritarian rule is unlikely,” when compared to authoritarianism at the national level.<sup>152</sup> However, the recent resurgence of voter restrictions and the solidification of one-party Republican rule in the American South highlights the likelihood of democratic backsliding. What Mickey overlooks is the fact that the underlying insidious factors of anti-democratic may be more tenacious and more easily overlooked than has been previously assumed. In that case, the resilience of the systemic racism and juridical factors enabling SITO hints at the ease with which widespread Emergency Management may be reinstated within Michigan, or be adopted by other State governments.

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<sup>151</sup> Power, “Phil Power: Foundations Picking up Where Emergency Managers Leave Off.”

<sup>152</sup> Mickey, *Paths Out of Dixie*, 17.

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